



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0397; FRL-9974-87-Region 5]

**Air Plan Approval; Illinois; Rule Part 225, Control of Emissions
from Large Combustion Sources**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Illinois state implementation plan (SIP) to amend requirements applicable to certain coal-fired electric generating units (EGUs). These amendments require the Will County 3 and Joliet 6, 7, and 8 EGUs to permanently cease combusting coal; allow other subject EGUs to cease combusting coal as an alternative means of compliance with mercury emission standards; allows the transfer of an existing sulfur dioxide (SO₂) control technology requirement exemption from Joliet 6 EGU to Will County 4 EGU; require all subject EGUs to comply with a group annual nitrogen oxide (NO_x) emission rate; and require only those subject EGUs that combust coal to comply with a group annual SO₂ emission rate. EPA proposed this action on August 31, 2017, and received two public comments in response.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0397. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, (312) 886-6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategy Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, hatten.charles@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

II. Public Comment Received and EPA's Response

III. What Action is EPA Taking?

IV. Incorporation by Reference.

V. Statutory and Executive Order Reviews.

I. Background

On June 24, 2011, Illinois EPA submitted to EPA state rules to address the visibility protection requirements of Section 169A of the Clean Air Act (CAA) and the regional haze rule, as codified in 40 CFR 51.308. This submission included the following provisions contained in Title 35 of the Illinois Administrative Code (IAC), Part 225 (Part 225): sections 225.291, 225.292, 225.293, 225.295 and 225.296 (except for 225.296(d)), and Appendix A to Part 225. On July 6, 2012, EPA approved these provisions (77 FR 39943).

On June 23, 2016, Illinois submitted revisions to these rules and on January 9, 2017, Illinois submitted additional information explaining the revisions.¹ These rules are known as the "Combined Pollutant Standard," and are codified at 35 IAC Part 225, Subpart B, titled "Control of Emissions from Large

¹ Illinois' final rule amended other state regulations, Parts 214 (Sulfur Limitations), and Part 217 (Nitrogen Oxide Emissions), and other portions of Part 225, that are not part of the Illinois SIP, and were not submitted to EPA as part of this action. Illinois stated in its statement of reasons for the final rule that these revisions are proposed to control emissions of sulfur dioxide (SO₂) in and around areas designated as nonattainment with respect to the 2010 National Ambient Air Quality Standard (NAAQS), and are intended to aid Illinois' attainment planning efforts for the 2010 SO₂ NAAQS.

Combustion Sources" (CPS or Part 225 rules). The CPS provides certain EGUs an alternative means of compliance with the mercury emission standards in 35 IAC 225.230(a).² The CPS applies to EGUs at six power plants, which are identified in Appendix A to the CPS. Illinois is revising the CPS to address the conversion of certain EGUs to fuel other than coal.

On August 31, 2017 (82 FR 41376), EPA proposed to approve the revisions to the Illinois air pollution control rules at 35 IAC Part 225, specifically, sections 225.291, 225.292, 225.293, 225.295 (except for 225.295(a)(4)), and 225.296 (except for 225.296(d)) and 225 Appendix A. As discussed in the proposal, the revisions meet all applicable requirements under the CAA, consistent with section 110(k)(3) of the CAA and the regional haze rule. The implementation of CPS for the regional haze SIP rules show that the proposed revisions result in significant reductions of emissions of SO₂, and no change or potential reductions in emissions of NO_x. Additionally, although Illinois did not rely on emission reductions of particulate matter (PM) in its regional haze SIP submittal, the state has shown that the proposed SIP amendments should result in reductions of PM emissions. *Id.* at 41377- 41378. Finally, with respect to the requirements of section 110(l) of the CAA, EPA has determined

² 35 IAC 225.230 contains Illinois' mercury emission standards for EGUs, and is not part of the federally enforceable SIP.

that the proposed SIP revisions will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA because: 1) there are no proposed changes to any SIP emission limits, except to make the group wide SO₂ limit more stringent; 2) the transfer of an existing sulfur dioxide SO₂ control technology requirement exemption from Joliet 6 EGU to Will County 4 does not change the regional haze plan such that EPA's assessment remains valid because Will County remains subject to the EGU group wide SO₂ emission limit; 3) the conversion of the EGUs from coal to natural gas will result in a significant decrease in emissions of SO₂, no increase in emissions of NO_x, and reductions in emissions of PM; and 4) the changes are consistent with Illinois' long-term strategy for making reasonable progress toward meeting the visibility goals of Section 169A of the CAA contained in the state's regional haze plan. *Id.* at 41379.

II. Public Comments Received and EPA's Response.

EPA received two comments on the proposed approval of Illinois' plan.

Comment #1: Citizens Against Ruining the Environment ("CARE"), a Will County, Illinois-based environmental education and advocacy organization, commented that "it is no longer necessary or advisable for U.S. EPA to include the Will County 4 exemption in this SIP revision." As the commenter noted, under

Illinois' plan, Will County 4 is exempt from the requirement to either shut down or install FGD equipment to control SO₂ emissions.

In support of this assertion, the commenter notes that in 2016, Illinois EPA issued a Construction Permit to Midwest Generation, LLC authorizing the construction of a Dry Sorbent Injection (DSI) system on Will County 4. According to the commenter, DSI is a type of "dry flue gas desulfurization technology," as defined by 40 CFR 63.10042. While recognizing that "the explicit and primary purpose" of this Construction Permit is "to control sulfur dioxide (SO₂) emissions of the boiler," the commenter also states that "a direct collateral benefit is . . . compliance with the NESHAP for Coal-and Oil-fired Electric Utility Steam Generating Units, 40 CFR 63 Subpart UUUU, as provided by 40 CFR 63.991(c)." The commenter goes on to list additional terms and conditions contained in the Construction Permit.

The commenter concludes that this "proposed SIP amendment is contrary to the manifest weight of the evidence because U.S. EPA does not acknowledge that MWG installed dry flue gas desulfurization technology at Will County 4. In light of this new factual information, there is no need for the amendment as it relates to the FGD exemption for Will County 4 . . . U.S. EPA's new proposal to provide an FGD exemption for Will County 4

is moot, and an entirely unnecessary component of the proposed SIP amendments. Even worse, U.S. EPA's uninformed decision to provide an unnecessary exemption could be used as a basis to justify the removal of *already installed* pollution control equipment." (*emphasis in original*).

EPA's Response: Illinois has shown that the proposed revisions to the CPS will result in equal if not more reasonable progress toward achieving natural visibility conditions in Class I areas under Illinois' regional haze rules, given the net overall reduction in emissions from the conversion of certain EGUs to natural gas. In enacting the CAA, Congress found that air pollution prevention and air pollution control at its source is the primary responsibility of states and local governments. CAA section 101(a)(3). So long as the ultimate effect of a state's choice of emission limitations is compliance with the national ambient air quality standards (NAAQS) and other applicable requirements, the State "is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation." See, e.g., *Train v. NRDC*, 421 U.S. 60, 79 (1975).

As documented in EPA's analysis of the proposed rule, Illinois has met all applicable requirements under the CAA, and the proposed SIP revision is consistent with section 110 of the CAA. Illinois has shown that the revisions to the CPS will

result in a reduction of more than 6,000 tons of SO₂ annually in 2017, and more than 4,500 tons of SO₂ annually in 2019 and subsequent years, beyond the emission reductions that would have occurred under the originally-approved CPS emission standards. Furthermore, Illinois has shown that there will be no increase in emissions of NO_x, and that there will likely be reductions in emissions of PM. Thus, Illinois has demonstrated that the revisions will not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement of the CAA, consistent with section 110(1) of the CAA.

More specifically, EPA approved the FGD exemption for Joliet 6 in Illinois' original regional haze plan as meeting the statutory requirements of the CAA, so that "transferring" this exemption to Will County 4 does not change the plan such that EPA's original assessment is altered (82 FR 41376-41378). This is because Will County 4 remains subject to the EGU group wide SO₂ emission limit, which has not changed under the originally-approved CPS emission standards. Additionally, Joliet 6 has been converted to natural gas, which results in substantially less SO₂ emissions than burning coal, and contributes to the overall decrease in SO₂ emission reductions relative to the original regional haze plan that EPA approved. Thus, the state has the legal authority to make this "reallocation," as it has

demonstrated that the NAAQS will be protected, and the reallocation does not change the basis for EPA's original approval of Illinois' regional haze plan.

Furthermore, EPA does not agree that approval of the SIP revision will ultimately result in the removal of the DSI system at Will County 4. Midwest Generation, LLC installed the DSI system to control SO₂ emissions, and uses it to meet the group average annual average SO₂ emission rates required by the CPS. It is also likely that Will County 4 will need to operate the DSI system to achieve the required hydrochloric acid emission rates under the Mercury and Air Toxics Standards (MATS) rule. As noted by the commenter, "although the explicit and primary purpose" of the Construction Permit is to control SO₂ emissions of the boiler, "a direct collateral benefit" of the Construction Permit is "namely, compliance with the [MATS rule]."

Additionally, because Midwest Generation has already installed the DSI system and is operating it pursuant to the Construction Permit, removal of the DSI system is a physical change. Any physical change to Will County 4 must be reviewed for applicability under the state's permitting program. If Midwest Generation removes the DSI system, it would be required to evaluate the resulting increases in actual emissions, including SO₂, to determine whether additional control technology would be required. In

addition, the emission limits that apply to the facility will continue to apply regardless of the status of the DSI system.

Comment #2: Another commenter stated that the proper term to mean pounds per million British thermal units should be expressed as "lbs/MMBtu" instead of "lbs/mmBtu."

EPA's Response: The commenter provides useful background information on how the term "pounds per million British thermal units" should be abbreviated, but the comment does not directly address the approvability of Illinois' plan. The abbreviation for the term "'million British thermal units,'" can be expressed in more than one way.

EPA abbreviated pounds per million British thermal units as "lbs/mmBtu" in our proposed approval of Illinois' revisions to the CPS published on August 31, 2017. The use of that term merely reflects the use of that abbreviation in the state's regulations to mean pounds per million British thermal units. EPA used "lbs/mmBtu" consistently throughout the rule so it is unlikely that there would be any confusion.

III. What Action is EPA Taking?

EPA is approving the revisions to the Illinois air pollution control rules at 35 IAC Part 225, specifically, sections 225.291, 225.292, 225.293, 225.295 (except for 225.295(a)(4)), and 225.296 (except for 225.296(d)) and

225. Appendix A. Illinois EPA submitted the revisions to Part 225 on June 23, 2016, and submitted supplemental information on January 9, 2017.

Illinois' final rule also included revisions to Parts 214 (Sulfur Limitations) and 217 (Nitrogen Oxide Emissions), and other sections of the Part 225 rules. At Illinois' request, EPA is not taking any action on those revisions, and, as noted above, on Illinois' addition of 35 IAC 225.295(a)(4).

IV. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval,

and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.³

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

³ 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian

reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final

rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter, Reporting and recordkeeping requirements,
Sulfur oxides.

Dated: February 14, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.720, the table in paragraph (c) is amended under “Part 225: Control of Emissions From Large Combustion Sources”, by revising the entries for sections 225.291, 225.292, 225.293, 225.295, and 225.296 and 225.Appendix A to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
Part 225: Control of Emissions From Large Combustion Sources				
* * * * *				
225.291	Combined Pollutant Standard: Purpose	12/7/2015	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal Register citation]	
225.292	Applicability of the Combined Pollutant Standard	12/7/2015	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal Register citation]	
225.293	Combined Pollutant Standard: Notice of Intent	12/7/2015	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal Register citation]	
225.295	Combined Pollutant	12/7/2015	<u>[insert date of</u>	Except

	Standard: Emission Standards for NO _x and SO ₂		<u>publication in the Federal Register</u>], [Insert Federal Register citation]	(a) (4) .
225.296	Combined Pollutant Standard: Control Technology Requirements for NO _x , SO ₂ , and PM Emissions	12/7/2015	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal Register citation]	Except (d) .
* * * * *				
225.Appendix A	Specified EGUs for Purposes of the CPS Coal-Fired Boilers as of July 1, 2016	12/7/2015	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal Register citation]	
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[FR Doc. 2018-03991 Filed: 2/27/2018 8:45 am; Publication Date: 2/28/2018]